IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.03.2002

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO.6300 OF 2001 and WMP.No.8897 OF 2001

V.K. Obuliswamy
Executive Engineer,
Tamil Nadu Water Supply &
Drainage Board, Salem. .. Petitioner

Vs.

1. The Managing Director,
Tamil Nadu Water Supply &
Drainage Board, Chepauk,
Chennai 600 005.

2. The Secretary to Government,
Municipal Administation &
Water Supply Department,
Chennai 9. .. Respondents

Petition filed under Article 226 of the Constitution of
India for the issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr.K. Venkataramani

For Respondent-1 : Mrs. Sudarshana Sundar
Respondent-2 : Mrs.N.G. Kalaiselvi
Special Govt. Pleader

: O R D E R

Heard the learned counsels appearing for the parties.
Petitioner who is an Executive Engineer working under Tamil Nadu Water Supply & Drainage Board, has filed this writ petition challenging the order of punishment imposed against him.

2. It is not disputed that the petitioner was working as
Deputy Superintendent Engineer in the office of the Superintendent Engineer, RPK Circle, Sivaganga with effect from 30.5.1994 to 30.4.1995. Subsequently he was also asked to remain in charge of the Post of the Executive Engineer, Maintenance Division, Paramakudy with effect from 29.12 .1994 to 7.4.1995, that is to say, for a period just exceeding four months. On 29.4.1999 disciplinary proceedings was initiated against the

petitioner. Charge Memo including the charge is to the following effect :-

" Charge: that he has failed to follow the instructions of the higher officials as not to allow in service the N.M.R. personnel who have not put in 480 days of service as on 31.12.93 during the period of 2 years."

3. Petitioner gave a reply stating that the Telex message of the Managing Director dated 5.1.1994 which had been received by his predecessor in office has never been brought to his notice. It was also further submitted by him that he did not know anything about the reemployment of the NMR personnel who were not put in service of 480 days as on 31.12.1993. Subsequently without holding any further enquiry,

minor punishment was imposed by the Managing Director, namely Sri A.M. Kasiviswanathan, I.A.S. The order passed by the Managing Director is quoted hereunder :-

"ORDER:
The following charge was framed against Thiru V.K. Oblisamy, Executive Engineer under Regulation 9(a) of TWAD Board Employees' ( Discipline and Appeal) Regulations, 1972 vide Charge Memo, first cited for the irregular appointment of NMR personnel during his period of service as Executive Engineer, TWAD Bd., Maintenance Division at Paramakudi
Charge: that he has failed to follow the instructions of the higher officials as not to allow in service the NMR personnel who have not put in 48days of service as on 31.12.93 during the period of 2 years.
2) In the letter second read above Thiru V.K. Oblisamy, Executive Engineer has submitted his reply to the charge framed against him. Taking into account, the reply furnished by the Accused Officer, th charge has been analysed in detail. After detailed analysis it is seen that he has failed to adhere to the instructions of the Managing Director issued in the Telex Message dated 5.1.94. His explanation to the effect that he was not informed by his predecessor about this telex message when he was holding the additional charge of the Executive Engineer, TWAD Bd., Maintenance Division, Paramakudi is not acceptable and the charge is held proved. For the proven charge, stoppage of increment for two years without cumulative effect is ordered to Thiru V.K. Oblisamy, Executive Engineer.
3) He may prefer an appeal against this order if he so desires within 30 days from the date of its receipt."

4. The petitioner filed appeal before the Board. In the appeal it was specifically stated that the petitioner was in additional charge of the post with effect from 29.12.94 to 7.4.95. It was further stated that 7 labourers referred to in the charge memo were initially engaged on contract basis by M/s.TEAM Company at their discretion for maintenance of Pooseri an Karumal D.S.Ps and the maintenance period of 3 years was over on 12.12.94 and the Company handed over the Schemes to D.S.P. Division, Paramakudi as per the terms and conditions. It was further stated that

" Hence I presume, that due to lack of trained people, the above mentioned 7 persons must have been recruited to continue the Operation and Maintenance of Pooseri and Karumal Destination Plants".
It was further stated that
" . . . The above 7 persons were recruited on 13.12.94, whereas I took over the post of the Executive Engineer, Maintenance Division, Paramakudi as Additional Charge only on 39.23.95. Hence the question of admitting the individual in TWAD Board by myself does not arise".
It was further stated by the petitioner that
" Also I submit that they had not completed 480 days of service in TWAD Board till my relief from the Additional Charge on 7.4.95. I would also like to submit that the question of admittance of N.M. Rs in TWAD Board and completion of 480 days is not applicable in this case since their entrance in TWAD Board is only from 13.12.94. The M/s. TEAM Company had paid salary to the above persons till 12.12.94, treating them as their own personnel and hence they do not have any binding on TWAD Board for their services prior to the date of 13.12.94 .
From the above facts, it may please be seen that I had not initiated their appointment and not entertained their re-appointment as stated in the charges. All the above 7 persons had joined in TWAD Board on 13.12.94, whereas I took out the Division on 29.12.94 only."

5. While considering the above appeal, the Board issued a notice to the present petitioner to show cause as to why the punishment of stoppage of two increments without cumulative effect should not be enhanced to stoppage of three increments without cumulative effect. After receiving the said notice, the petitioner again filed a show cause where he has stressed on the fact that by the time he had taken additional charge, the persons concerned had already been employed. It was also stated that no pecuniary loss had been caused to the Board as the persons engaged were getting salary for the work rendered by them. Appeal was subsequently rejected and the punishment imposed was enhanced by directing stoppage of three increments without cumulative effect. Such penalty being imposed is challenged in the present writ petition.

6. A perusal of the charge memo indicates that the petitioner had failed to obtain prior approval of the appropriate authority allowing seven persons to join duty. It appears that neither the disciplinary authority nor the appellate authority have cared to apply their mind to the explanation furnished by the petitioner . The petitioner was in charge for a period of about 4 months. It had been specifically stated by the petitioner that the persons had been engaged prior to the petitioner assumed additional charge. The petitioner has also specifically stated that the telex message addressed to his predecessor had never been brought to his notice. There is no materials on record to show that telex message was specifically brought to the notice of the petitioner. Even assuming that the petitioner was aware of such telex message, the fact remains that the pers ons had been employed prior to the petitioner assumed additional charge and they continued not only during his short tenure when he remained in additional charge, but also thereafter.

7. It is surprising that the petitioner has been picked out and inflicted with the punishment even though he was not responsible for the initial appointment of the persons concerned. It is not the case of the Board that during the short tenure the petitioner remained in charge, the persons who had already been engaged are allowed to complete 480 days necessiating their regular absorptions subsequently. Moreover, it is quite possible that those persons were absorbed on regular basis by considering the period of employment under the contractor, for which the petitioner was no way responsible. This appears to be a case where without proper application of mind, punishment has been inflicted. It is of course true that the punishment inflicted was a minor and as such no enquiry was necessary in normal course, however, when the petitioner has denied the charges and there is factual dispute, it would have been more appropriate for the authority to embark upon an enquiry regarding the factual dispute before passing the order. Moreover, the order passed does not indicate how the factual decision has been arrived at by the authority on the available materials on record.

For the aforesaid reasons, the writ petition is allowed and the punishment inflicted is quashed. There would be no order as to costs. Consequently, W.M.P.No.8897 of 2001 is closed.

21.03.2002
Index : Yes /no
Internet : Yes
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To
1. The Managing Director,
Tamil Nadu Water Supply &
Drainage Board, Chepauk,
Chennai 600 005.

2. The Secretary to Government,
Municipal Administation &
Water Supply Department,
Chennai 9.

P.K. MISRA, J.

Order in W.P.6300 OF 2001
and WMP.No.8897 of 2001
21.03.2002